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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,415	11/03/2003	Aline Abergel	231191US26	2252
22850	7590	05/03/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			WEEKS, GLORIA R	
		ART UNIT	PAPER NUMBER	
			3721	

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/698,415	ABERGEL, ALINE
	Examiner Gloria R. Weeks	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 15 February 2006.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-16, 18 and 29-33 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-16, 18 and 29-33 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

<p>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p>	<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>
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***Continued Examination***

1. In light of the persuasive arguments in the Appeal Brief filed on February 15, 2006, prosecution of this Application has been re-opened.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-7, 16, 18 and 29-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation of a support having at least one cavity passing at least partially through, yet Applicant goes on to state the cavity opens on a first and second face of the support. Under what condition could the cavity pass partially through the support, and open on both a first and second face of the support?

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 8, 9 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (US 2004/003825) in view of Coburn, Jr. (USPN 4,491,389) and Destanque et al. (USPN 6,412,640).

In reference to claims 1, 13 and 14, Kelly discloses a device for packaging a product comprising: a support (14) having a flat overall shape and having two faces, the support (14) further including at least one cavity (14a) that passes at least partially through the support (14) and opens on a first face of the two faces through a first opening, the cavity (14a) containing a cosmetic product (12); a lid (16) having a flat overall shape, wherein the lid (16) is articulated to the support (14); and wherein the support (14) and the lid (16) are articulated to each other by an arrangement comprising a sticker (24) adhesively bonded onto one of the faces of the lid (16) and onto one of the faces of the support (14).

Kelly does not disclose the sticker forming a mirror. Coburn teaches a sticker forming a mirror (12). While the device of Kelly includes a mirror on a surface opposite the surface bonded to the sticker (24), Destanque et al. teaches a packaging device including multiple surfaces forming a mirror, specifically an internal and external mirror surface. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the sticker of Kelly to form a mirror since Coburn states in column 1 lines 29-35 that forming a mirror on a sticker reduces cost and increases safety, and column 4 lines 60-64 Destanque et al. states that forming a mirror on multiple surfaces of packaging device allows a user the advantage of utilizing a mirror without opening the packaging device.

Regarding claims 2 and 3, Kelly discloses a packaging device wherein the lid (16) can rest on the support (14) so as to completely cover the first face of the support in which the first opening opens.

With respect to claims 8 and 9, Kelly discloses the sticker (24) being optionally formed of cellulose based, polymeric or metallic material. Coburn, Jr. teaches a reflective sticker formed

from polyester thermoplastic (28) with a layer of metallized paint (30), forming a mirror. It would have obvious to one having ordinary skill in the art at the time of the invention to further modify the device of Kelly to utilize the mirror material of Coburn, Jr. for the purpose of reducing cost. The use of such mirrors is also well known in the art of toys for the purpose of increasing safety by removing the need to use glass for reflective or mirror surfaces.

In reference to claim 15, Kelly discloses the cavity (14a) of the support (14) having a rectangular cross-section, as stated in paragraph 32 of Applicant's specification, it would have been obvious to one having ordinary skill in the art to form the cavity in a variety of cross-sections, including a circular cross-section.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (US 2004/003825) in view of Coburn, Jr. (USPN 4,491,389) and Destanque et al. (USPN 6,412,640) as applied to claims 1 above, and further in view of Guiard (WO 97/15910), Verespej et al. (USPN 7,025,220) and Matney (USPN 4,469,226).

In reference to claim 10, Kelly discloses a packaging device having a support with a cavity capable of being covered by a lid, wherein the lid is articulated to the support. Kelly does not disclose a removable cover for the cavity in addition to the lid. Guiard teaches a packaging device including a platform having a cavity (16) with a removable cover (26). While Guiard does not disclose a lid in addition to the removable cover (26), figure 2 of Matney and column 1 lines 29-47 of Verespej et al. state that it is well known in the art of packaging to provide a device with a tamper proof seal, in addition to a reclosable lid. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the device of

Kelly to include the removable cover of Guiard for the purpose of protecting the cosmetic product and ensuring a tamper proof product prior to authorized use.

7. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (US 2004/003825) in view of Coburn, Jr. (USPN 4,491,389) and Destanque et al. (USPN 6,412,640) as applied to claims 1 above, and further in view of Parrotta et al. (USPN 4,890,872).

Regarding claims 11-12, Kelly does not disclose the specific dimensions or thickness of the lid and support. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a lid and support having a thickness of .5 mm-2 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. While Kelly teaches a support thickness deep enough to contain an amount of product for multiple uses, Parrotta et al. teaches that it is well known to provide a support thickness that is significantly smaller for the purpose providing only a sample of a product.

8. Claims 7, 16, 18 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (US 2004/003825) in view of Guiard (WO 97/15910) and Parrotta et al. (USPN 4,890,872).

In reference to claims 16, 18 and 33, Kelly discloses a device for packaging a product comprising: a flat support (14) including at least one cavity (14a) that passes at least partially through the support (14) and opens on a first face of the support (14) through a first opening, and wherein the cavity (14a) contains a cosmetic product (12); a flat lid (16) articulated to the support (14) by a thermoplastic and/or metallic sticker (24) adhesively bonded (page 2 paragraph

21) onto one of the faces of the lid (16) and onto one of the faces of the support. Kelly does not disclose the at least one cavity having a first and second opening.

Guiard teaches a packaging device having a support (11) including a cavity containing a cosmetic product (18, 20) that passes through a first and second face of the support, wherein a first adhesive sheet closes off the cavity on the first face of the support (11) and a second adhesive sheet closes off the cavity on the second face of the support (11). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the support of Kelly to include a second opening closed by the adhesive sheet, since Guiard teaches that such a modification allows the product to be secured to the support.

While one could justifiably define the cosmetic product of Guiard as the combination of the cosmetic composition and the tray in which the composition is contained, Parrotta et al. teaches that it is also known in the art of packaging to apply the cosmetic composition in a cavity (22) onto a adhesive sheet (34) without the use of additional retaining structure.

Regarding claim 7, Kelly does not disclose printed matter on the adhesive sheet that articulates the lid to the support. Nevertheless, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide printed matter on the sheet adhesively bonded to the lid ad support, since Examiner takes Official notice that it is well known in the art of packaging to provide an adhesive label with a printed design to the outside surface of a package for the purpose of decoration or disclosing the contents of the package.

9. Claims 4-6 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (US 2004/003825) in view of Guiard (WO 97/15910) and Parrotta et al. (USPN 4,890,872) as applied to claim 16 above, and further in view of Coburn, Jr. (USPN 4,491,389).

With respect to claims 4-6, Kelly discloses the sticker (24) being optionally formed of cellulose based, polymeric or metallic material. Coburn, Jr. teaches a reflective sticker formed from polyester thermoplastic (28) with a layer of aluminum paint (30), forming a mirror. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the device of Kelly to utilize the mirror material of Coburn, Jr. for the purpose of reducing cost. The use of such mirrors is also well known in the art of toys for the purpose of increasing safety by removing the need to use glass for reflective or mirror surfaces.

In reference to claims 20, Kelly further discloses a mirror (22) on a face of the lid (16), but does not disclose the mirror being formed from a sticker. Coburn teaches a sticker forming a mirror (12). It would have been obvious to one having ordinary skill in the art at the time of the invention to replace the mirror of Kelly sticker mirror of Coburn, since Coburn states in column 1 lines 29-35 that forming a mirror from a sticker reduces cost and increases safety.

10. Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (US 2004/003825) in view of Guiard (WO 97/15910), Parrotta et al. (USPN 4,890,872) and Coburn, Jr. (USPN 4,491,389) as applied to claim 29 above, and further in view of Verespej et al. (USPN 7,025,220) and Matney (USPN 4,469,226).

Regarding claims 30 and 31, the modified apparatus of Kelly discloses the product contained in the cavity in contact with the adhesive sheet, but does not disclose the packaging device including a removable cover over the first opening. Guiard teaches a packaging device

including a platform having a cavity (16) with a removable cover (26). While Guiard does not disclose a lid in addition to the removable cover (26), figure 2 of Matney and column 1 lines 29-47 of Verespej et al. state that it is well known in the art of packaging to provide a device with a tamper proof seal, in addition to a reclosable lid. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the device of Kelly to include the removable cover of Guiard for the purpose of protecting the cosmetic product and ensuring a tamper proof product prior to authorized use.

Regarding claim 32, Kelly does not disclose the specific dimensions or thickness of the lid and support. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a lid and support having a thickness of .5 mm-2 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. While Kelly teaches a support thickness deep enough to contain an amount of product for multiple uses, Parrotta et al. teaches that it is well known to provide a support thickness that is significantly smaller for the purpose providing only a sample of a product.

***Response to Arguments***

11. Applicant's arguments filed February 15, 2006 have been considered, but are moot in view of the new rejections.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations related to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R. Weeks  
Examiner  
Art Unit 3721

  
grw  
May 1, 2006

  
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